REMARKS

The Applicants wish to thank the Examiner for thoroughly reviewing and considering the pending application. The Office Action dated March 29, 2006 has been received and carefully reviewed. Claims 1, 2, 4-7 and 10 are currently pending. Reexamination and reconsideration are respectfully requested.

On page 2 of the Office Action, claims 2, 5-7 and 10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12, 17, 18 and 22 of the copending divisional Application No. 10/981,574. Applicants will address this rejection upon receiving an indication of allowability, if doing so is still necessary at that time.

On page 3 of the Office Action, claims 1 and 4 are rejected as being unpatentable over Admitted Prior Art ("APA") as shown in Figure 2, in view of JP 6-1411982 ("*Hara*") or US 5,802,957 ("*Wanat*") and further in view of US 5,126,536 ("*Devlin*"). The Applicants respectfully traverse the rejection.

As required in Chapter 2143.03 of the M.P.E.P., in order to "establish *prima facie* obviousness of the claimed invention, all the limitations must be taught or suggested by the prior art." The Applicants respectfully submit that none of the references cited in the Office Action, either singularly or in combination, disclose each and every element recited in claims 1 and 4.

In particular, claim 1 recites: "a microprocessor configured to control toasting time by combining a first, a second and a third time period, wherein the first time period corresponds with the toaster function, wherein the second time period corresponds with the temperature inside the toaster, and the third time period corresponds with the voltage level." In a non-limiting example of the present invention, the microprocessor of the present invention determines a final toasting time period by combining a time period corresponding to the toaster

function, a time period corresponding to the temperature inside the toaster, and a time period corresponding with the voltage level. Thus, the purpose and importance of "combining" is clear, it results in a more accurate final toasting time period. That is, a more accurate total resultant time period is calculated by combining each of the time periods discussed above. As discussed below, "combining" is neither unimportant or insignificant.

None of the references relied upon in the Office Action, either singularly or in combination, disclose a combined toaster and microwave oven comprising a microprocessor configured to control toasting time by combining these three time periods: a time period corresponding with the toaster function, a time period corresponding with the temperature inside the toaster, and a time period corresponding with the voltage level. The Office Action however states that the *APA* teaches controlling toasting time based on the toaster function, *Hara* or *Wanat* teach toasting time according to the inside temperature of the toasting chamber, and *Devlin* teaches that "it is well known in the art of electrical toasters to set the degree of toasting by adjusting the voltage level of the resistence heaters." Even if one assumes the Office Action has correctly characterized each of the above relied-upon references, none of the references, either alone or in combination, teaches or suggests "combining a first, a second and a third time period, wherein the first time period corresponds with the toaster function, wherein the second time period corresponds with the temperature inside the toaster, and the third time period corresponds with the voltage level," as is expressly recited in claim 1 of the present application. Thus, for at least this reason, claim 1 is patentably distinguishable over the *APA*, *Hara*, *Wanat* and *Devlin*.

The Applicants note that the Examiner admits in the Office Action that none of the references, individually or in combination, teaches or suggests "combining" the time periods as recited in claim 1. The Examiner deals with thus by characterizing the process of "combining"

as unimportant and insignificant. Specifically, the Examiner states: "[t]o separately determine different heating periods before combine [sic] them into a total resultant time period would have been a mere intermediate step of programming the control method but a*dds little patentability weight* to the claimed combined toaster and microwave oven." However, Applicants disagree that "combining" time periods is unimportant and insignificant. In fact, this is the focus of claim 1 and, as discussed above, combining different heating periods allows for a more accurate final toasting time period than would otherwise be determined. Therefore, the process of "combining" is not an unimportant, insignificant or mere intermediate step of the claimed invention.

The Applicant would now like to address the issue of obviousness. The Examiner has provided no basis as to why one of ordinary skill would have been motivated to combine the various references relied on in this rejection. Instead, the Office Action simply concludes that "it would have been obvious to one of ordinary skill in the art at the time of the invention to modify *APA* combined with *Hara* or *Wanat* to set voltage level of the resistance heaters of the toasters to adjust the toasting level which is a factor of the total toasting time according to the user's preference, in view of the teaching of *Devlin*... [t]herefore, the microprocessor of the toaster is controlled to have a total toasting time according to all these factors: toaster, function, inside temperature and the voltage level according to the combined teachings of all these references."

It is improper for the Examiner to merely deem something obvious without any teaching/suggestion, or the taking of Judicial Notice. If the Examiner combines references, the Examiner must explain why one skilled in the art at the time of the invention would have been so motivated to combine the references. In the present rejection, the Examienr has given no motiviation. On the other hand, if the Examiner wishes to take Judicial Notice that a proposed claim feature is notoriously well known, it is respectfully requested that supporting evidence be provided. The Federal Circuit has cautioned that an Examiner must show reasons that the skilled

artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. In re Rouffet, 47 USPQ2d 1453, 1458 (Fed. Cir. 1998).

For all of the reasons set forth above, the Applicants respectfully submit that claim 1 is patentable over the *APA*, in view of *Hara* or *Wanat*, and further in view of *Devlin*. Likewise, claim 4 which depends from claim 1, is also patentable for at least the same reasons. The Applicants, therefore, request that the Examiner withdraw the rejection.

On page 3 of the Office Action, claims 2, 5-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the *APA*, in view of *Hara* or *Wanat* and *Devlin*, as applied to claims 1 and 4, and further in view of US 5,128,521 ("*Lanno*"). The Applicants traverse this rejection.

Claim 2 depends from claim 1 and incorporates by reference all of the limitations of claim 1. As previously discussed, claim 1 is patentably distinguishable over the *APA*, *Hara*, *Wanat* and *Devlin* because none of these references, either alone or in combination, teaches or suggests "combining a first, a second and a third time period, wherein the first time period corresponds with the toaster function, wherein the second time period corresponds with the temperature inside the toaster, and the third time period corresponds with the voltage level." *Lanno* does not cure this deficiency because it does not teach combining the time periods. Therefore, since claim 2 depends from claim 1, Applicants respectfully submit that claim 2 is patentable over the *APA*, in view of *Hara* or *Wanat* and *Devlin*, as applied to claims 1 and 4, and further in view of *Lanno*.

Independent claim 5 recites a method for operating a combined toaster and microwave oven that expressly involves "setting a toasting time period based on the selected toaster function, the inside temperature of the toaster and a voltage of a heater...." Thus, a final toasting time period is set by combining a time period based on the toaster function, a time period based

on the temperature inside the toaster, and a time period based on the voltage of the heater so that a more accurate total resultant time period is calculated.

Again none of the references relied upon in the Office Action, either singularly or in combination, disclose setting a toasting time period based on the selected toaster function, the inside temperature of the toaster and a voltage of a heater. Nor do any of the references teach or suggest combining the time periods. Similarly, *Lanno* does not cure this deficiency. Thus, claim 5 is patentably distinguishable over the *APA*, *Hara*, *Wanat*, *Devlin*, and *Lanno*.

Finally, the Applicant would like to again address the issue of obviousness. The Examiner has provided no basis as to why one of ordinary skill would have been motivated to combine the various references relied on in this rejection. Instead, the Office Action simply concludes that "it would have been obvious to one of ordinary skill in the art at the time of the invention to modify *APA* as modified above to control the toasting operation according to the kind, the toast voltage level and the time elapsed between the toasting operation for better toasting control and result, in view of the teaching of *Lanno*." As stated above, it is improper to deem a claim obvious in view of multiple references without establishing motivation.

Accordingly, for all of the reasons set forth above, the Applicants respectfully submit that claim 5 is patentable over the *APA*, in view of *Hara* or *Wanat* and *Devlin*, as applied to claims 1 and 4, and further in view of *Lanno* Likewise, claims 6-7 and 10 which depend from claim 5, are also patentable for at least the same reasons as discussed above. The Applicants therefore request that the Examiner withdraw the rejection of claims 2, 5-7 and 10.

The application is in a condition for allowance and favorable action is respectfully solicited. If for any reason the Examiner believes a conversation with the Applicant's representative would facilitate the prosecution of this application, the Examiner is encouraged to

contact the undersigned attorney at (202) 496-7500. All correspondence should continue to be sent to the below-listed address.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. §1.136, and any additional fees required under 37 C.F.R. §1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911.

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Respectfully submitted,

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